

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAMUEL ROBERT GOOD,

Plaintiff,

Case No. 2:21-cv-29

v.

Honorable Janet T. Neff

UNKNOWN PLUMM et al.,

Defendants.

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Chippewa Correctional Facility (URF) in Kincheloe, Chippewa County, Michigan. The events about which he complains occurred at that facility. Plaintiff sues Counselor Unknown

Plumm, Warden Connie Horton, Corrections Officer Unknown Strange, STG Coordinator J. Miller, and Corrections Officer Unknown Meyer.

Plaintiff alleges that on August 9, 2020, Defendant Meyer fabricated a cell inventory sheet claiming that Plaintiff's locker, which was broken, was in good condition. Some months later Defendant Strange fabricated a false misconduct claiming that Plaintiff broke his locker. Plaintiff wrote kites to Defendant Miller and Warden Horton explaining that because his locker was broken he did not have a container to store his personal belongings. Plaintiff also talked to Defendant Plumm about not having a container to store his personal property, at which time Plumm disclosed Plaintiff's personal information.

On January 16, 2021, Defendant Strange made fun of Plaintiff's disabling medical condition, myotonic dystrophy, while rounding on the yard. Shortly thereafter while Plaintiff was explaining to Plumm about the ongoing problems he was having with Strange, Plumm shrugged his shoulders and walked away.

On January 30, 2021, Defendant Strange was passing out supplies, but when Plaintiff asked for some, Strange disrespected Plaintiff's religion by telling him he should believe in God.

Plaintiff seeks compensatory and punitive damages.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory

statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); see also *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

III. **Conclusory Allegations**

In his complaint, Plaintiff sets forth conclusory statements about Defendants’ conduct but offers no facts to put the statements into context or allow the Court to discern whether any of Plaintiff’s constitutional rights have been violated.

While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. The court need not accept “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

At present, Plaintiff's allegations do little more than suggest the “mere possibility” that his constitutional rights have been violated. *Id.* Consequently, the complaint must be dismissed for failure to state a claim.

Even considering the possible merits of Plaintiff's complaint, he still fails to state a claim on which relief can be granted.

IV. **Supervisory liability**

Plaintiff fails to make specific factual allegations against Defendants Miller or Horton, other than his claim that they failed to conduct an investigation in response to his grievances. Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior or vicarious liability. *Iqbal*, 556 U.S. at 676; *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 691(1978); *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). A claimed constitutional violation must be based upon active unconstitutional behavior. *Grinter v. Knight*, 532 F.3d 567, 575–76 (6th Cir. 2008); *Greene v.*

Barber, 310 F.3d 889, 899 (6th Cir. 2002). The acts of one's subordinates are not enough, nor can supervisory liability be based upon the mere failure to act. *Grinter*, 532 F.3d at 576; *Greene*, 310 F.3d at 899; *Summers v. Leis*, 368 F.3d 881, 888 (6th Cir. 2004). Moreover, § 1983 liability may not be imposed simply because a supervisor denied an administrative grievance or failed to act based upon information contained in a grievance. *See Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). “[A] plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676. Plaintiff has failed to allege that Defendants Miller or Horton engaged in any active unconstitutional behavior. Accordingly, he fails to state a claim against them.

V. **Verbal Harassment**

Plaintiff claims that Strange made fun of his disabling medical condition and Plumm ignored Strange’s disrespectful comments. Additionally, Strange allegedly disrespected Plaintiff’s religion by telling Plaintiff he should believe in God.

The use of harassing or degrading language by a prison official, although unprofessional and deplorable, does not rise to constitutional dimensions. *See Ivey*, 832 F.2d 950, 954–55 (6th Cir. 1987); *see also Johnson v. Dellatifa*, 357 F.3d 539, 546 (6th Cir. 2004) (harassment and verbal abuse do not constitute the type of infliction of pain that the Eighth Amendment prohibits); *Violett v. Reynolds*, No. 02-6366, 2003 WL 22097827, at *3 (6th Cir. Sept. 5, 2003) (verbal abuse and harassment do not constitute punishment that would support an Eighth Amendment claim); *Thaddeus-X v. Langley*, No. 96-1282, 1997 WL 205604, at *1 (6th Cir. Apr. 24, 1997) (verbal harassment is insufficient to state a claim); *Murray v. U.S. Bureau of Prisons*, No. 95-5204, 1997 WL 34677, at *3 (6th Cir. Jan. 28, 1997) (“Although we do not condone the alleged statements, the Eighth Amendment does not afford us the power to correct every action, statement, or attitude of a prison official with which we might disagree.”); *Clark v. Turner*, No.

96-3265, 1996 WL 721798, at *2 (6th Cir. Dec. 13, 1996) (“Verbal harassment or idle threats are generally not sufficient to constitute an invasion of an inmate’s constitutional rights.”); *Brown v. Toombs*, No. 92-1756, 1993 WL 11882 (6th Cir. Jan. 21, 1993) (“Brown’s allegation that a corrections officer used derogatory language and insulting racial epithets is insufficient to support his claim under the Eighth Amendment.”). Accordingly, Plaintiff fails to state an Eighth Amendment claim against Defendant Plumm or Strange arising from their alleged verbal harassment.

VI. Disclosure of Personal Information

Plaintiff claims that Defendant Plumm disclosed his personal information in violation of his right to privacy under the Fourteenth Amendment.

Two types of interests have been identified by the Supreme Court as protected by the right to privacy that is rooted in the substantive due process protections of the Fourteenth Amendment. One is the interest in “independence in making certain kinds of important decisions,” *Whalen v. Roe*, 429 U.S. 589, 599–600 & n.26 (1977) (noting that these decisions have been characterized as dealing with “matters relating to procreation, marriage, contraception, family relationships, and child rearing and education.” (quoting *Paul v. Davis*, 424 U.S. 693, 713 (1976))). The other type of privacy interest applicable to individuals is the “interest in avoiding disclosure of personal matters.” *Id.* at 599, 603–04 (recognizing that a statute requiring that the state be provided with a copy of certain drug prescriptions implicated the individual’s interest in nondisclosure, but upholding the law because the statute contained adequate security measures); *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 465 (1977) (assuming that President Nixon had a legitimate expectation of privacy in his private communications, but upholding a federal law that provided for the review and classification of presidential materials by professional archivists).

Lambert v. Hartman, 517 F.3d 433, 440 (6th Cir. 2008). Plaintiff’s claim implicates the latter interest, i.e. the “individual’s right to control the nature and extent of information released about that individual,” which “has been coined an informational right to privacy.” *Bloch v. Ribar*, 156 F.3d 673, 683 (6th Cir. 1998).

In *J.P. v. DeSanti*, 653 F.2d 1080 (6th Cir. 1981), the Sixth Circuit reviewed the Supreme Court’s opinions regarding the right to privacy, including *Whalen*, *Nixon*, and *Paul*, and concluded that “the Constitution does not encompass a general right to nondisclosure of private information.” *Id.* at 1087–90. The court declined to “recognize a general constitutional right to have disclosure of private information measured against the need for disclosure,” reasoning that “[t]he Framers . . . cannot have intended that the federal courts become involved in an inquiry nearly as broad balancing almost every act of government . . . against its intrusion on a concept so vague, undefinable, and all-encompassing as individual privacy.” *Id.* at 1089–90. Consequently, the Sixth Circuit restricts the constitutional right to informational privacy to “those personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty.’” *Id.* at 1090 (citations omitted). “Only after a fundamental right is identified should the court proceed to the next step of the analysis—the balancing of the government’s interest in disseminating the information against the individual’s interest in keeping the information private.” *Lambert*, 517 F.3d at 440.¹

Applying these standards, the Sixth Circuit has repeatedly rejected claims asserting a constitutional right to nondisclosure of personal information. *See, e.g., Lee v. City of Columbus*, 636 F.3d 245, 261 (6th Cir. 2011) (city’s requirement that employees returning from sick leave disclose the nature of their illness to their immediate supervisors does not implicate a fundamental right); *Summe v. Kenton Cnty. Clerk’s Office*, 604 F.3d 257, 270–71 (6th Cir. 2010) (county’s

¹ In contrast to the Sixth Circuit, other circuits hold that the disclosure of some kinds of personal information requires the court to balance the government’s interests in disclosure against the individual’s interest in avoiding disclosure. *See, e.g., Barry v. New York*, 712 F.2d 1554, 1559 (2d Cir. 1983); *Fraternal Order of Police v. Philadelphia*, 812 F.2d 105, 110 (3d Cir. 1987); *Woodland v. Houston*, 940 F.2d 134, 138 (5th Cir. 1991) (per curiam); *In re Crawford*, 194 F.3d 954, 959 (9th Cir. 1999). Although the Supreme Court recently contrasted the holding in *DeSanti* with the approach taken in the foregoing opinions, the Court declined to clarify the scope of a constitutional right to informational privacy. *See NASA v. Nelson*, 562 U.S. 134, 144–48 & n.9 (2011) (assuming, without deciding, that such a right existed in that case).

release of medical record of deputy county clerk to citizen pursuant to open records request did not implicate a right fundamental or implicit in the concept of ordered liberty so as to violate constitutional right to privacy); *Jenkins v. Rock Hill Local Sch. Dist.*, 513 F.3d 580, 591 (6th Cir. 2008) (school's disclosure of information to Children Services not a violation of plaintiff's constitutional rights); *Barber v. Overton*, 496 F.3d 449, 455–57 (6th Cir. 2007) (release of guards' birth dates and social security numbers did not rise to constitutional level); *Coleman v. Martin*, 63 F. App'x 791, 793 (6th Cir. 2003) (dissemination of prisoner's mental health records to parole board was not a constitutional violation); *Jarvis v. Wellman*, 52 F.3d 125, 126 (6th Cir. 1995) (disclosure of rape victim's medical records to an inmate did not violate her constitutional privacy rights); *Doe v. Wigginton*, 21 F.3d 733, 740 (6th Cir. 1994) (disclosure of prisoner's HIV status did not implicate the Fourteenth Amendment); *DeSanti*, 653 F.2d at 1091 (constitutional rights not violated by dissemination of juvenile delinquents' social histories to various state agencies). Indeed, the Sixth Circuit has recognized an “informational-privacy interest of constitutional dimension” in only two instances: (1) where the release of personal information could lead to bodily harm, as in *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998) (dissemination of undercover officers personnel file to members of violent street gang some of whom officers testified against at trial); and (2) where the information released was of a “sexual, personal, and humiliating nature,” as in *Bloch*, 156 F.3d at 684 (nonconsensual disclosure at press conference of details of plaintiff's rape).

In the instant case, Plaintiff does not reveal the nature of the personal information, where the disclosure took place—privately in Plaintiff's cell, on the yard, in the hall. Thus, it is unclear and cannot be discerned from the facts alleged in the complaint whether the information Plumm revealed was protected by the Fourteenth Amendment right to informational privacy, or

even if the information were so protected, whether Plumm actually revealed the information to anyone besides Plaintiff. Accordingly, Plaintiff fails to state a claim against Plumm for violating his right to informational privacy under the Fourteenth Amendment.

VII. **Fabricated Reports**

Plaintiff claims that Defendant Meyer fabricated a report stating that Plaintiff's locker was in working condition, when it was not. He also claims that Defendant Strange fabricated a misconduct report stating that Plaintiff had broken his locker. Plaintiff's allegations fail to implicate either the Eighth or the Fourteenth Amendment.

The Eighth Amendment prohibits any punishment which violates the civilized standards of humanity and decency, or involves the unnecessary and wanton infliction of pain. *See Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). To prove an Eighth Amendment violation, an inmate must show that he has been deprived of the minimum civilized measures of life's necessities. *See Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

At most, Plaintiff alleges that Defendant Strange falsified a misconduct charge for destruction or misuse of property, a Class-II minor misconduct charge.² *See* MDOC Policy Directive 03.03.105, Attach. B (listing Class-II misconducts). Plaintiff's allegation against Defendant Meyer involved no misconduct charge at all—merely a report that Plaintiff's locker was in working condition, which may have led to Strange's subsequent Class-II misconduct charge when the locker was found to be broken.

The maximum sanctions for a Class-II misconduct are confinement to quarters (toplock) for up to 5 days, loss of privileges for up to 30 days, and the possibility of assignment of

² Under Michigan Department of Corrections Policy Directive 03.03.105 ¶ A (eff. July 1, 2018), prison rule violations are classified as Class I, Class II, or Class III. A Class-I misconduct is a "major" misconduct and Class-II and -III misconducts are "minor" misconducts. *Id.* ¶ B.

extra duty or restitution. Courts have recognized that even the sanction of placement in segregation—a sanction available only for Class-I misconducts—is a routine discomfort that is a part of the penalty that criminal offenders pay for their offenses against society, it is typically insufficient to support an Eighth Amendment claim. *See Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Moreover, the Sixth Circuit has held that without a showing that basic human needs were not met, the denial of privileges as a result misconduct sanctions cannot establish an Eighth Amendment violation. *See Evans v. Vinson*, 427 F. App'x 437, 443 (6th Cir. 2011); *Harden-Bey v. Rutter*, 524 F.3d 789, 795 (6th Cir. 2008); *see also Lacey v. Michigan Dep't of Corr.*, No. 95-1097, 1995 WL 564301 (6th Cir. Sept. 21, 1995) (placement in detention did not violate Eighth Amendment); *Eaddy v. Foltz*, No. 85-1419, 1985 WL 14065 (6th Cir. Dec. 18, 1985) (whether an Eighth Amendment claim is stated for placement in segregation depends upon severity or pervasiveness of conditions). “[F]iling a false misconduct report is not cruel and unusual punishment under the Eighth Amendment.” *McDaniel v. Bechard*, No. 15-13892, 2017 WL 5712898, at *5 (E.D. Mich. Nov. 28, 2017) (internal citations omitted).

Moreover, Defendants’ conduct fails to implicate Plaintiff’s right to due process. The Fourteenth Amendment protects an individual from deprivation of life, liberty or property, without due process of law.” *Bazetta v. McGinnis*, 430 F.3d 795, 801 (6th Cir. 2005). To establish a Fourteenth Amendment procedural due process violation, a plaintiff must show that one of these interests is at stake. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Analysis of a procedural due process claim involves two steps: “[T]he first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*,

490 U.S. 454, 460 (1989) (citations omitted), *partially overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

The Supreme Court long has held that the Due Process Clause does not protect every change in the conditions of confinement having an impact on a prisoner. *See Meachum v. Fano*, 427 U.S. 215, 225 (1976). In *Sandin v. Conner*, 515 U.S. 472, 484 (1995), the Court set forth the standard for determining when a state-created right creates a federally cognizable liberty interest protected by the Due Process Clause. According to that Court, a prisoner is entitled to the protections of due process only when the sanction “will inevitably affect the duration of his sentence” or when a deprivation imposes an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 486–87; *see also Jones v. Baker*, 155 F.3d 810, 812 (6th Cir. 1998); *Rimmer-Bey v. Brown*, 62 F.3d 789, 790–91 (6th Cir. 1995).

The Sixth Circuit routinely has held that minor misconduct convictions are not atypical and significant deprivations and therefore do not implicate due process. *See, e.g., Ingram v. Jewell*, 94 F. App’x 271, 273 (6th Cir. 2004), *overruled on other grounds by Maben v. Thelen*, 887 F.3d 252 (6th Cir. 2018); *Carter v. Tucker*, 69 F. App’x 678, 680 (6th Cir. 2003); *Green v. Waldren*, No. 99-1561, 2000 WL 876765, at *2 (6th Cir. June 23, 2000); *Staffney v. Allen*, No. 98-1880, 1999 WL 617967, at *2 (6th Cir. Aug. 12, 1999). Because Plaintiff had no due process right in not being falsely convicted of a minor misconduct charge, he had no right not to be falsely charged with such an offense. Plaintiff therefore fails to state a due process claim.

As a consequence, Plaintiff has failed to state a claim for violation of any of his constitutional rights based on the conduct of Meyer or Strange in preparing false reports.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons the Court concludes that Plaintiff's claims are properly dismissed, the Court also concludes that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court certifies that an appeal would not be taken in good faith.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: June 14, 2021

/s/ Janet T. Neff
Janet T. Neff
United States District Judge